Supreme Court, U. S.
FILED
APR 12 1979
JOSEPH F. SPANIOL, JR. CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 79-112

JAMES H. COUNTRYMAN
Petitioner,

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents,

PETITION FOR WRIT OF CERTIORARI

JAMES H. COUNTRYMAN, per se
214 West 5th.- Room 204
Odessa, Texas 79761
Attorney for Petitioner

TABLE OF CONTENTS

Jurisdictional Grounds 2
Questions Presented 3
Statutes Involved 4
Statement of the Case 4
Argument 9
Certificate of Service 15

Appendix i-ii
Judgment, United States Court of Appeals for the Fifth Circuit A1
Amended Judgment, United States Court of Appeals for the Fifth Circuit A2
ORDER by United States District Court Western District of Texas, Midland ... A3
ORDER by United States District Court Western District of Texas, Midland ... A4
JUDGMENT, United States District Court Western District of Texas, Midland A5
Letter of Instruction from Clerk, United States Circuit Court of Appeals for Fifth Circuit, 4-16-79.. A6-7
Letter from Research Department, Trial Lawyers Association of America. A8-9
Informative Letter from President, Trial Lawyers Association of America . 10

Letter from Texas State Board of Insurance to Petitioner..... A11-12-13
Letter from State Farm Insurance Company to State Board of Insurance. A14-15
Letter from Petitioner to State Farm Insurance Company A16-17
Insurance Study by Federal Inssurance Administration A18-20
Amendment to Original Complaint... A21-24

CITATIONS

Cases

Fine Arts Corporation, C.C.A. Mich.... 1943, 136 F. 2d 28, Bnk. Rep. N.S. 213..... 3
Grabinger v. Conlisk, D.C. Ill. 1970 320 F. Supp. 1213, Affirmed, C.A. 7th 1972, 455 F. 2d 490 11
Douglas v. City of Jeannette, Pa. 877 13
Fisher v. Cahill, 474 F. 2d 991 13
North Carolina v. Pearce, 395 711 .... A8

Statutes

United States Constitution Art. I, Sec X, Cl. I, Amendments I, IV, V, VII and XIV.

Art 1, Sec. 10, Cl. 1. 42 USC. Sec. 1983. 395 U.S. 711. 29 Vanderbilt L. Rev. 815 (1976) Title 28, Sec.1331 (a) and (b) U.S.C.A. Title 28, Sec. 1332 (a) (b) (c) and (d). U.S.C.A.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1978

No.

JAMES H. COUNTRYMAN
Petitioner

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO THE HONORABLES, THE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

The Petitioner, James H. Countryman, an Attorney at Law for more than sixty years,

and appearing herein per se, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit rendered on January 17, 1979, affirming the summary judgment of the United States District Court for the Western District of Texas in the case of Petitioner versus the State of Texas and the State Farm Insurance Company.

JURISDICTIONAL GROUNDS

The Court of Appeals rendered no written opinion in the case, and its decision was expressed in one nescient word, namely, "Affirmed." Therefore, no citation of any authorities was made by the Court, since it seemed to assume that if there was anything about the case worth knowing the District Court would have discovered it.

Title 28, U.S.C.A., Secs. 1254 and 2101(c) confer upon the Supreme Court plenary jurisdiction to entertain appeals, writs of certiorari and reviews of all final judgments of the Court of Appeals of the Fifth Circuit. Since the District Court dismissed the case for want of jurisdiction it went to the Court of Appeals on the pleadings alone, in which event, was not that Court

required to accept as true whatever facts were well pleaded? See In re: Fine Arts Corporation, C.C.A. Mich. 1943, 136 F. 2d 28, 54 Am. Bnk. Rep. N.S. 213.

QUESTIONS PRESENTED

The first question which the Petitioner respectfully brings to the Court is this: Can a United States District Court, or a Court of Appeals dismiss a suit for lack of jurisdiction in a case where the complaint or other pleadings aver one or several transgressions by the defendant of the Petitioner's rights and immunities specified in the Constitution? As for an example, if the petitioner has paid to the state a fine for speeding, can the state, acting alone, or in complicity with the petitioner's automobile insurance carrier impose a series of fines or penalties upon the petitioner, after the insurance carrier declares in writing that his reason for so doing was because the insured once paid a fine for speeding? Is the plea of autrefois convict under the Fifth Amendment not available to the insured to prevent the imposition of double jeopardy upon

him? Then there are allegations of the impairment of the obligation of a contract contrary to Art. I, Sec. X, Cl. I of the Constitution, and discrimination under a general and specific Civil Rights laws.

STATUTES INVOLVED

U.S. Constitution, Art. I, Sec. X, Cl.I, and Amendments I, IV, V, VII and XIV. Art. 1, Sec. 10, Cl. 1, 42 USC. Sec. 1983. 395 U.S. 711. 29 Vanderbilt L. Rev. 815(1976) Tit. 28, Sec. 1331 (a) and (b) U.S.C.A. Tit. 28, Sec. 1332 (a) (b) (c) and (d).

Petitioner offers his apologies to the Court for failing to list the citations of the Constitution and statutes separately.

STATEMENT OF THE CASE

The cause of this action arose in Hudspeth County, Texas on the morning of July 25th 1974, when the Petitioner was traveling by automobile from El Paso, Texas to his home in Odessa, Texas. The weather was clear, the highway was dry and driving conditions were good. On U.S. IS Highway No. 10, approximately five miles west of Sierra Blanca, Texas, Petitioner came upon a passenger

bus which bore a state of Georgia license plate, and which seemed to be occupied by tourists. The bus was traveling at an irregular rate of speed and in so doing it seemingly presented a traffic hazzard. The Petitioner kept alert for a chance to pass the bus, and when he saw the highway was clear ahead for a safe distance he increased his speed, and in so doing did exceed the 55-mile limit, but he did not attain a speed of 70 miles per hour which had recently been the legal rate of speed on that highway, and in the State of Texas for many years.

Presently Petitioner came upon a roadblock which was attended by a number of patrolmen who informed him that a helicopter in their service had reported that he had been driving in excess of the speed limit. This, petitioner did not deny, but offered an explanation which was ineffectual to change anything, only that he would hear from the "judge" in a few days.

Within a week a justice of the peace, who has a limited authority to administer some criminal laws in the state of Texas, sent Petitioner a statement that he had been assessed a fine of $27.50 for speeding, and requested payment thereof at once. Peti-

tioner mailed a cashier's check for that sum to the justice of the peace on August 2, 1974, and one year, seven months and 18 days expired before any further intelligence was received concerning the case.

Under date of 4-20-76, the State Farm Insurance Company sent Petitioner a statement containing the following information:

"Information within a Consumer Report furnished by Texas Department of Public Safety Austin, Texas has influenced our decision to increase the charge for your insurance. Your next billing will reflect this charge. If additional information is desired, contact your agent. Effective 6-14-76 James - Speed - 7-25-74."

On May 12, 1976 Petitioner addressed a letter to the State Farm Insurance Company in which he requested to be advised as to the source of its authority to impose an increase in his automobile insurance premium rate. Under date of May 20, 1976, a reply came, stating:

"Mr. Countryman, due to your speeding conviction of July 25, 1974, a fifteen percent surcharge will apply to your Bodily Injury/ Property Damage Liability coverage, your Personal Injury Protection coverage and your Collision coverage."

Since research failed to disclose any case where a court had held that an automobile

insurer could impose a surcharge upon his insured's automobile policy for no reason other than the fact that the latter had paid a fine for a minor traffic offense, whereas there was no prior obligation requiring the insured to pay such surcharge, the payment thereof can be nothing but the imposition of double jeopardy upon the insured because the first jeopardy furnishes the sole reason for the imposition of the second jeopardy upon him.

Viewing this scheme as highly discriminatory because it imposes the surcharge upon a certain class of policyholders who are less able to bear this extra cost of their insurance, the Petitioner decided to do something about it by invoking the aid of our courts.

Wherefore, Petitioner instituted suit in the United States District Court for the Western District of Texas Midland-Odessa Division against both, the State of Texas, and the State Farm Insurance Company. The purpose of joining both parties in the suit was to call attention to the complicity existing between the State Farm Insurance Company and the State Board of Insurance, an arm of the state government, by which the insurance board permits the insurance

company to assess members of a certain group of its policyholders with penalties because such members incurred penalties in traffic offenses. This scheme enables a private corporation to operate under color of law and tends to invest the fraudulent surcharges with auras of legality.

From the very first the Defendants' attorneys began filing motions to dismiss the case for want of jurisdictions. Finally, Chief Judge Adrian A. Spears of the District Court summarily dismissed the case.

Thereupon, the Petitioner filed his appeal to the United States Court of Appeals for the Fifth Circuit. In his first brief, the Petitioner requested permission of the Court to present an oral argument at the hearing, but the opposing attorneys opposed an oral argument, and their wishes prevailed. After denying the request for an oral argument, the Court of Appeals

wrongfully yielded to the suggestion of Mr. Pollan, attorney for the State of Texas, contained in his Brief Concerning Oral Argument that:

"The State of Texas respectfully submits that this cause should be considered for placement on the summary calendar, in accordance with rule 18 of the local rules of the United States Court of Appeals for the Fifth Circuit."

Accordingly, the Court of Appeals relegated the case to the so-called summary calendar, and promptly affirmed, without comment, the action of the District Court in summarily dismissing the case. The date of affirmance was November 6, 1978.

Under date of November 24, 1978, Petitioner filed with the United States Court of Appeals a Petition for Rehearing, or Reconsideration of the case, but it was denied without comment on January 17, 1979. after The Court of Appeals issued it final decision denying the application for rehearing, Petitioner filed this Petition for writ of Certiorari.

ARGUMENT

The United States Court of Appeals for the Fifth Circuit has refused to decide an important question of federal law which has

never been, but should be settled by this Court. That question involves the law of double jeopardy as it is enunciated in unmistakable language in the Fifth Amendment to the Constitution of the United States, and in the interpretative opinions of a wealth of legal authorities. In this bivouac of man's liberty is to be found the gravamen of Petitioner's complaint.

Sir William Blackstone considered it to be a universal maxim of the common law of England "that no man is to be brought into jeopardy of his life more than once for the same offense." This epochal remark can be regarded as an inspiration to the authors of the Bill of Rights, for eleven years after the death of the Great Barrister the Congress was to ratify that noble instrument, the Fifth Article of which proscribes a second punishment, yea! even a second trial for the same offense.

What defense the Defendants' attorneys have offered hardly touches the question of double jeopardy, but is based almost entirely upon jurisdictional matters that alone are impotent to solve the novella of this case. Their main briefs cite a total of 35 court decisions upon which they rely

for support of the fictional claim that the District Court was without jurisdiction to adjudicate a single averment in Petitioner's complaint. In addition to the 35 cases on which the Defendants expect the Court to depend for the basis of a judgment of affirmance the attorneys cite Article III, Section 2 of the Constitution, two Sections from Title 15, and two Sections from Title 28, U.S.C. But not one of these authorities supports the views of Defendants that the District Court was correct in summarily dismissing the case, or that the United States Court of Appeals for the Fifth Circuit was without error in affirming the judgment of the District Court which was a stark denial of Petitioner's constitutional rights.

In the case of Grabinger v. Conlisk, D.C. Ill. 1970, 320 F. Supp. 1213, affirmed C.A. 7th, 1972, 455 F.2d 490, it is said:

"When a claim is alleged to arise under the Constitution or laws of the United States, a federal court must not dismiss the claim for lack of jurisdiction unless it appears to a legal certainty, that the claim is fully insubstantial and frivolous insofar as the Constitution and laws of the United States are concerned."

When the Petitioner alleged in his claim

the following irrefragable state of facts:

"The District Court may declare acts of Congress unconstitutional, D.C. Texas, 1943, 49 F. Supp. 973 - Affirmed 141 F. 2d. 584."

On the 9th day of September' 1976, Petitioner filed an amendment to the original complaint in this case which contained two counts, XXII and XXIII. These counts challenged, respectively, the constitutionality of Section 1331 (a) and (b), and Secion 1332 (a), (b), (c) and (d) of Title 28, U.S.C.A. The challenge was supported by the argument that the point of unconstitutionality lies in the fact that the cited provisions of the congressional acts violate Article VII of the Bill of Rights in which it is provided that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, ***". From this language it must be presumed that the authors of the amendment were determined to preserve the right of the people to invoke the aid of the courts to recover small sums which were commensurate with the economy of that day. Had the sum of $10,000.00 been named as the minimum amount necessary to preserve the right of trial by jury, the cry would have been

that the Defendant, the State of Texas, had imposed a fine upon him for a minor traffic infraction, and later had allowed its codefendant, the State Farm Insurance Company, to impose upon Petitioner a second fine for the same offense to run for a period of three years, and then had presented a reasonable argument in support of the legality of his claim that such second fine constituted double jeopardy, was that claim insubstantial and frivolous? If so, then one wonders what it takes to state a valid claim that will confer jurisdiction upon a federal court.

Federal district courts have jurisdiction over suits brought without the allegation or proof of any jurisdictional amount, so long as the complaint states a cause of action for deprivation of Civil Rights.- Douglas v. City of Jeannette, Pa. 63 S. Ct. 877. In the case of Fisher v. Cahill, 474 F.2d 991, it was held That: No jurisdictional amount is required in action under this section." (Title 42, Sec. 1983, U.S.C.A.)

The multisyllabic assertions by Defendants' attorneys that the courts are without jurisdiction of this case must fall by the wayside in the presence of the above and

heard throughout the land that the Congress had labored long and diligently to create a system of courts that would provide for the needs of the people for ages to come. But had the authors inserted in the great instrument of freedom, the provision of the Act of July 25, 1958, which requires that in most cases for the recovery of money or property, the value thereof must amount to $10,000.00 or more, the chances are that the people would have turned away from the ratifying conventions in disgust since in that day, as in this, thousands would be barred from asserting their just claims in court because they were less than the minimum required to invoke the jurisdiction of the courts.

Petitioner respectfully prays that the Court grant this Petition for Writ of Certiorari.

James H. Countryman

JAMES H. COUNTRYMAN, per se
214 West 5th. Room 204
Odessa, Texas 79761
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing petition and appendixes for Writ of Certiorari with the necessary sum in postage attached, have been mailed to each of the opposing counsel for the respondents, duly addressed to their respective offices in Austin, and Midland, Texas.

This the 16th day of July, 1979

James H. Countryman

JAMES H. COUNTRYMAN, per se
Attorney for Petitioner
214 West 5th.- Room 204
dessa, Texas 79761

APPENDIX

JAMES H. COUNTRYMAN

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Defendants-Appellees

No._____

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

July 19, 1976

The Petitioner as Plaintiff, instituted a suit in the United States District Court for the Western District of Texas, at Midland, Texas, on the 19th day of July, 1976, to recover of the Defendants, the State of Texas, and the State Farm Insurance Company actual and punitive damages for unlawfully subjecting the Plaintiff to the penalties of double jeopardy, and for the deprivation of other fundamental rights secured to him

(APPENDIX Continued)

by the Constitution of the United States, such as equality before the law, the right to be free from subjection to ex post facto laws and laws imparing the obligation of contracts. Then there is a statutory enactment, the purpose of which was to prevent a citizen from entering a federal court with a claim for a monetary judgment that does not exceed the sum of $10,000.00 in amount or value. The Defendants' attorneys have persistently contended that this case does not meet that requirement, but whether that was the reason why the United States District Court for the Western District of Texas, at Midland, Adrian A. Spears, Chief Judge, entered a summary Judgment in the case on June 15, 1978 dismissing the case for the stated reason: "Dismissed due to subject matter jurisdiction." is not known.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT PUBLISH

No. 78-2432
Summary Calendar*

JAMES H. COUNTRYMAN,

Plaintiff-Appellant,

versus

THE STATE OF TEXAS and STATE FARM INSURANCE COMPANY,

Defendents-Appellees.

Appeal from the United States District Court for the Western District of Texas

(JANUARY 17, 1979)

Before RONEY, GEE and FAYE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1/]

Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

[1/]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT PUBLISH

No. 78-2432
Summary Calendar*

JAMES H. COUNTRYMAN,

Plaintiff-Appellant,

versus

THE STATE OF TEXAS and STATE FARM INSURANCE COMPANY,

Defendents-Appellees.

Appeal from the United States District Court for the Western District of Texas

(JANUARY 17, 1979)

Before RONEY, GEE AND FAYE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.1/

Costs are taxed against the plaintiff-appellant.

Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

1/See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

ISSUED AS MANDATE: FEB. 8, 1979.

FILED
MAY 31, 1978
Dan W. Benedict, Clerk
By/s/ BP Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

JAMES H. COUNTRYMAN)(
)(
V.)(MO 76 CA 49
)(
THE STATE OF TEXAS AND)(
STATE FARM INSURANCE)(

ORDER

It appearing to the Court that the Plaintiff in this cause has failed to comply with the pre-trial schedule set forth in the Order of the Court dated December 27, 1976, has failed to move to extend the time for compliance with said order and has failed to file a timely response to the Court's letter of May 11, 1978 inquiring into the status of this cause, the Court is of the opinion that this cause may be in a posture for dismissal for want of prosecution pursuant to Rule 41 (b), Fed. R. Civ.P. It is, therefore,

ORDERED that the Plaintiff show cause in writing within ten (10) days from the date this Order is filed with the office of the United States District Clerk in Midland, Texas, why he has not complied with this Court's Order of December 27, 1976, and why he has not replied to this Court's letter of May 11, 1978. Should a response to this Order not be timely filed, the Court will entertain a motion on the part of the Defendents in this cause to dismiss the same for want of prosecution.

Entered at San Antonio, Texas this 29th day of May, 1978.

/s/ ADRIAN A. SPEARS
ADRIAN A. SPEARS
United States District Judge

A4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED
JUNE 19, 1978
Dan W. Benedict, Clerk
By /s/ BP Deputy

JAMES H. COUNTRYMAN)(
)(
V.)(MO 76 CA 49
)(
STATE OF TEXAS AND THE)(
STATE FARM INSURANCE)(
COMPANY

ORDER

Came on for consideration the motion to dismiss filed herein by the State of Texas and the motion to dismiss filed by the State Farm County Mutual Insurance Company of Texas. It appears to the Court, after an examination of said motions along with the plaintiff's motion to strike and the plaintiff's demurrer, that this Court is without jurisdiction over the subject matter of the claims asserted in plaintiff's complaint. It is, therefore,

ORDERED that this cause be and the same is hereby, DISMISSED.

Entered this 15th day of June, 1978.

/s/ ADRIAN A. SPEARS
ADRIAN A. SPEARS
United States District Judge

A5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND ODESSA DIVISION

JAMES H. COUNTRYMAN, PRO SE (sic)
VS. MO76CA49
THE STATE OF TEXAS and
THE STATE FARM INSURANCE COMPANY

J U D G M E N T

This action came on for consideration before the Court, Honorable Adrian A. Spears, United States District Judge, and the issues having been duly considered and the Court having rendered a decision on June 15, 1978, it is, therefore,

ORDERED AND ADJUDGED THAT THIS ACTION BE DISMISSED DUE TO SUBJECT MATTER JURISDICTION.

DATED AT MIDLAND, TEXAS THIS THE 20th DAY OF MAY, 1978. (sic).

WILLIAM G. PUTNICKI, INTERIM CLERK
UNITED STATES DISTRICT COURT

By /s/ Bobbye Pieper
Deputy U.S. District Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
April 16, 1979

Edward W. Wadsworth
Clerk

Tel 504-589-6514
500 Camp Street
New Orleans, La.
70130

Mr. James H. Countryman
214 W. 5th St., #204
Odessa, Texas 79761

No. 78-2432 - JAMES H. COUNTRYMAN, V. STATE OF TEXAS and STATE FARM INS. CO.
78-3316 - IN RE: JAMES H. COUNTRYMAN

Dear Counsel:

Under the revised Rule 21 (1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of Certiorari and, therefore, will not be routinely prepared by this office. 38 LW 3502. However, in the event this office is notified by the Supreme Court that the petition for writ of certiorari has been GRANTED,

the record will be certified to the Supreme Court.

A copy of the opinion, if any, judgment, or Rule 21 decision, and the denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this case.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By /s/ Sally Hayward
Deputy Clerk

enclosures

THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA

(Corporate seal and names of research personnel omitted)

December 16, 1976

James H. Countryman, Esq.
Attorney at law
214 W. 5th Room 204
Odessa, Texas

Re: Insurance Surcharge

Dear Mr. Countryman:

I have received your provocative inquiry and must admit that with the sources that are readily available and meager time that I can alot (sic) to doing research for members, I have been able to find very little.

I think your double jeopardy argument is imaginative and intriguing. What little material is available on the merit system seems to indicate, as you know, that it is not based on statistical evidence, thus, arguably making the surcharge another fine. The leading case on multiple punishment is North Carolina v. Pearce, 395 U.S. 711 (1969). You could look to the Civil Rights cases to define "state action". See also "Action under Color of State Law - Legislative Authorization of Private Action Resembling Public Function Constitutes Action Under Color of State Law," 29 Vanderbilt L. Rev. 851 (1976).

The second argument could be an equal protection challenge to the surcharge. I have enclosed an interesting recent Idaho case which may give you some ideas.

Thirdly, since the speeding conviction was based on a guilty plea, the plea could be challenged as not having been knowingly made. See comprehensive article at 71 F.R.D. 235-333 (Oct. 1976).

Sincerely,

/s/ Christina Wolfe
Christina Wolfe
Assistant Editor
The Association of Trial Lawyers of America
CW:cy

THE ASSOCIATION OF
TRIAL LAWYERS OF AMERICA

20 Garden Street, Cambridge, Massachusetts
02138 617/868-6900

February 7, 1977

President
Robert G. Begam
1400 Arizona Title Building
Phoenix, Zrizona 85333
(602) 254-6071

Mr. James H. Countryman
214 West Fifth Room 204
Odessa, Texas 79761

Dear Mr. Countryman:

Your theory is both provocative and imaginative

I would think that one of our ATLA lawyers in Odessa or one of the neighboring communities would be able to associate with you in the processing of the case. I really don't know what more I can do beyond referring you to the ATLA director. Phil Gauss, Executive Director of the Texas Trial Lawyers Association in Austin, Texas, might have some specific suggestions, although obviously there will be no one who really has any background or specialized experience in the field in which you need help, since you are plowing new ground.

In short, if I were in your position I would pick up the phone and start calling some of the other ATLA lawyers in Odessa until I found one who is interested in getting involved.

Good luck on your worthy cause.

Best regards

/s/ Robert G. Begam

Robert G. Begam

Ned Price
Member

Hugh C. Yantis, Jr.
Chairman

Durwood Manford
Member

(State Seal)

Mrs. Pat Wagner
Chief Clerk

STATE BOARD OF INSURANCE
1110 San Jacinto
AUSTIN, TEXAS 78786

June 16, 1978

Mr. James H. Countryman
214 W. 5th, Room 204
Odessa, Texas 79761

Re: Automobile Insurance
State Farm Insurance Company

Dear Mr. Countryman:

In furtherance of my correspondence of May 25, 1978, attached is a copy of State Farm Mutual Automobile Insurance Company's letter of May 31, 1978 wherein you will find that the premium difference is due to your wife's car being placed in the State Farm Insurance Group's rate regulated company and your coverage bein placed in the County Mutual insurer. Additionally, according to the Company you have a chargeable accidnt and traffic conviction on your record.

State Farm Mutual Automobile Insurance Company is required to use the automobile in-

surance rates and rating plans prescribed by this Board.

County Mutual insurers have a statutory exception from the Board's rate making authority. County Mutual insurance companies are legally authorized to file the rates and rating plans which the management of each particular County Mutual wishes to use. This Board must accept such filings as no disapproval authority is vested in the Board.

County Mutual insurers specialize in writing insureds that are unable to secure automobile insurance at State Board of Insurance prescribed rates.

The Texas automobile insurance laws give the State Board of Insurance the authority to prescribe the automobile insurance rates, rating plans and policy forms which must be used by every licensed insurer subject to the Board's rate making jurisdiction. However, the insurance laws do not give the Board the authority to tell a company what risks it must accept on the business voluntarily submitted to the company.

Each company's management is allowed to set their own underwriting requirements on voluntary (i.e., not assigned risk) business. Therefore, if State Farm Mutual Automobile Insurance Company did not wish to insure you in 1971 due to your age, this Board could not require the company to do otherwise.

(Letter concluded on next page)

Yours very truly,

COMMISSIONER OF INSURANCE

By: /s/ D.E. O'Brien

D.E. O'Brien, Director
Automobile, Bond, Burglary,
Plate Glass and Title Insurance
Casualty Division

DEO'B:ss

Attachment

State Farm
Insurance

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

May 11, 1978

Southwest Texas Division
9001 N. Interregional Hwy

Charles Worth CPCU
Division Manager

D.E. O'Brien, Director
Automobile, Bond, Burglary
Plate Glass and Title Insurance
Casualty Division
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Re: Automobile Insurance Rates
Mr. James H. Countryman

Dear Mr. O'Brien:

The answers to Mr. Countryman's question are:

1. The premium due on 6-14-78 was increased over the previous term because Mr. Countryman had a chargeable accident and violation on 11-1-77. This is a Texas County Mutual policy and the surcharge for an accident and violation is 35% on the applicable coverages.

2. The higher valued Chrysler, New Yorker owned by the wife carries a lowyer premium because Mrs. Countryman is insured in State Farm Mutual rather than State Farm County Mutual of Texas, and has no surcharges.

Mrs. Countryman was age 64 when she was first insured on June 14, 1972 making her eligible

for State Farm Mutual.

Mr. Countryman was age 74 when he first insured on May 11, 1971 thus requiring placement in our Texas County Mutual.

Sincerely,

/s/ Charles Wirth
Charles Wirth, CPCU
Division Manager.

CW: dg

JAMES H. COUNTRYMAN
214 W. 5th Room 204
Odessa, Texas 79761

June 28, 1978

Mr. Charles Wirth
Division Manager
State Farm Insurance Company
9001 interregional Highway
Austin, Texas 78787

Dear Mr. Wirth:

A letter received by me from D.E. O'Brien, representing the Commissioner of Insurance, and dated June 16, 1978, contained the following statement statement which was attributed to your company:"Additionally, according to the company you have a chargeable accident and traffic conviction on your record." Enclosed with the O'Brien letter was a copy of your letter to him on May 31,1978 containing the following reference to me: "The premium due on 6-14-78 was increased over theprevious term because Mr. Countryman had a chargeable accident and violation on 11-1-77."

The so-called accident which you referred to as having taken place on 11-1-77 occurred on 11-2-77, and when the citation was filed against me in the Municipal Court of Odessa, Texas I demanded and was granted a jury trial. The jury was empaneled on the morning of February 9, 1978, and the case proceeded to trial. I proved to the jury that the prosecution was a malignant fraud. And the jury believed me and rendered a verdict of acquittal.

So, Mr. Wirth you are a liar. I have never been convicted of a traffic violation involving the slightest injury to any living being or item of property in all my 60 years of driving automobiles. The present instance is the only time in my life that I have ever been accused of a traffic offense except twice for speeding.

I am returning your premium notice showing you have extended the date for renewal of my insurance until tomorrow, June 29, 1978. But there is not a chance. Your company has robbed me of the last dime it will ever get from me.

Sincerely,

/s/ James H. Countryman

CC; To State Board of Insurance
H.B. Copeland

INSURANCE STUDY BY FEDERAL INSURANCE ADMINISTRATION

By G. DAVID WALLACE

A federal study has found that millions of people apparently are excluded for no sound reason from obtaining the insurance they need to drive a car, buy a home or protect themselves from catastrophic losses.

The study said millions of other so-called high-risk individuals can get insurance only by paying inflated premiums, even though (illigible type) "clean" risks by industry standards.

For "clean" drivers the surcharge amounts to a national average of 86 per cent a year on insurance premiums, the study estimated.

The report of the Federal Insurance Administration, an arm of the Department of Housing and Urban Development, recommended that the people be guaranteed the right by law to buy insuran , with rates based on governmentregulated (sic) classifications.

But the study avoided suggesting any federal role in the process, leaving regula-

tion to the state agencies which have traditionally watched over the industry.

We're trying to avoid it because of our faith in the private insurance system, in the tradition of state regulation, said George K. Bernstein, federal insurance Administrator.

The report said that the latest count, in 1967, showed 20 per cent of the nation's drivers were not covered by insurance and a total of 4 million drivers are in various state assignedrisk (sic) plans.

The assigned risk plans are supposedly reserved for those drivers who don't qualify as acceptable risks for conventional commercial insurance. Such drivers pay $68 more than the national average $79 a year for the basic auto insurance which the conventionally insured drivers buy.

Yet 3. 3 million of the assigned risk drivers haven't had an accident within three years and are thus "clean" within the definition applied by commercial insurers, the report said. And 2.7 million

neither had been involved in an accident nor committed any chargeable driving violations within three years.

The report said a similar situation exists for home owners and property insurance.

Twenty-seven states maintain FAIR plans which provide access to federally supported riot insurance programs. FAIR stands for Fair Access to Insurance Requirements and is supposedly reserved for otherwise uninsurable property owners.

(Published 11-3-74)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

JAMES H. COUNTRYMAN	
V.	CIVIL
THE STATE OF TEXAS, AND THE	ACTION NO.
STATE FARM INSURANCE COMPANY	MO 76-CA-49

AMENDMENT TO ORIGINAL COMPLAINT

COMES NOW THE PLAINTIFF and begs leave of this Honorable Court to amend his original complaint which has been filed, served, and is now pending in this Court. The amendment is effective by adding the following two Counts, No. XXII and No. XXIII, respectively, to the Complaint.

XXII

The Plaintiff avers that Title 28, Section 1331 (a) and (b) of the United States Code Annotated, being a law enacted by the Congress of the United States, is in violation of the Constitution of the United States, and more especially of Article VII of the Bill of Rights, and should be declared so by this Court. The point of unconstitutionality lies in the fact that the said Act of

Congress bars the door of the Federal Courts to all parties whose monetary demands of the Defendant do not amount to $10,000.00, and whose controversy does not arise under the Constitution and Laws of the United States. Whereas, Article VII of the Bill of Rights fixes no amount of money, or value, that the plaintiff must demand in order to invoke the jurisdiction of a Federal Court, but only where the demand is for $20.00 or more he may demand a jury trial.

XXIII

The Plaintiff avers that Title 28, Section 1332 (a) (b) (c) and (d) of the United States Code Annotated, being a law enacted by the Congress of the United States, is a violation of the Constitution of the United States, and more especially of Article VII of the Bill of Rights, and should be declared so by this Court. The point of unconstitutionality lies in the fact that the said Act of Congress bars the door of the Federal Courts to all parties whose monetary demands of the Defendant do not amount to $10,000.00, and there also is not a diversity of

citizenship between the parties plaintiff and defendant. Whereas, Article VII of the Bill of Rights fixes no amount of money or value, that the plaintiff must demand in order to invoke the jurisdiction of a federal court, but only where the demand is for $20.00 or more can he request a jury trial.

The question before the Court is whether a citizen's rights and immunities, which are secured to him by the Constitution of the United States, can be swept away or interdicted by courts that are creatures of the Constitution. Because in his claim for a benefit, or for the redress of a grievance, the citizen was able to prove no more than $9,999.00 as the value of his benefit, or the worth of his demand for the redress of a grievance, he had no standing in court.

Whereras, another citizen who had suffered the same, or a like grievance, was able to prove that the monetary value of his claim, or the worth of his demand for the redress of a grievance, amounted to $10,001.00, a sum of money barely within the bounds of the law which Congress insinuated into the Constitution where, unfortunately, it still

lies as a stumbling block to equal justice under law.

The Petitioner respectfully represents to the Court that this plea for a writ of certiorari is simply a petition for a redress of a grievance within the purview of the First Amendment to the Constitution of the United States, unless of course, it can be said that people assembled have rights that are denied to individuals standing alone.